* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on: May 2, 2007
Date of Decision: July 6, 2007

\+ **Writ Petition (C) No. 8097 of 2004**

RAGHU NAYYAR ..... Petitioner
in person.

versus

MUNICIPAL CORPORATION OF DELHI & ORS .... Respondents
Through Mr. Ashok Bhasin, Sr. Advocate with Mr. Yogesh Chandra and Mr. A.K.Sham, Advocates and
Mr. Shivinder Chopra, Advocate for the MCD.
Mr. B.B.Jain, Advocate for R-2.
Mr. V.K.Singh Advocate with
Mr. Suresh Kait, Advocate for UOI.

AND

\+ **Writ Petition (C) No. 17144 of 2004**

SEEMA NAYYAR ..... Petitioner
in person.

versus

MUNICIPAL CORPORATION OF DELHI & ORS. ... Respondents
Through Mr. Ashok Bhasin, Sr. Advocate with Mr. Yogesh Chandra and Mr. A.K.Sham, Advocates and
Mr. Shivinder Chopra, Advocate for the MCD.
Mr. B.B.Jain, Advocate for R-2.
Mr. V.K.Singh Advocate with
Mr. Suresh Kait, Advocate for UOI.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

: Dr. S. Muralidhar, J.

1. Both these writ petitions involve common questions and are, therefore, being disposed of by this common judgment. The petitioner in Writ Petition (C) No. 8097 of 2004 Shri Raghu Nayyar entered into an agreement to sell with Smt. Kamla Pandey on 22.8.1997 in regard

to the purchase of a flat A-45, Retreat Cooperative Group Housing Society Plot No. 20 I.P.Extension, New Delhi-110092 for an amount of Rs. 7,90,000/-. As far as the petitioner in Writ Petition (C) No. 17144 of 2004, Smt. Seema Nayyar, is concerned, she entered into an agreement to sell with Shri J.S.Pal on 17.8.1998 towards the purchase of flat A-41 in Retreat Cooperative Housing Society Ltd. for a sum of Rs.9,50,000. The vendors executed General Powers of Attorney and other relevant documents in favour of the petitioner in each case. On 15.1.2000 the petitioners applied to the Delhi Development Authority (DDA) for conversion from leasehold to freehold basis. The relevant conveyance deed executed by the DDA on the payment of Rs.10,000 each was registered on 25.6.2001 after the Collector of Stamps adjudicated the stamp duty and transfer duty on the value of Rs.10,000/-.

Issues arising in the writ petitions

2. The present writ petitions raise concerns three specific issues. The first concerns the assessment of property tax by the Municipal Corporation of Delhi ('MCD') and the fixing of the appropriate rateable value (RV) for that purpose of both these flats. The second concerns the validity of the demand of transfer duty by the MCD as a pre-condition to the mutation of the petitioners' names in its records in respect of their respective flats. The third issue concerns the claim by the petitioners for compensation for the mental agony caused to them for over two years by the officers of the MCD who have been arrayed as Respondents 2 to 5 in both the writ petitions.

Rateable Value

3. As far as the issue of the fixation of RV of the flats in question, the case of the petitioners was that in respect of the flats in the same

society the MCD had fixed a different RV which ought to have been followed even in the case of the petitioners. The case was that although for the other flats the RV had been fixed by a rectified assessment order with effect from 1.4.1992 at Rs.29,700, the flat A-45 was assessed on the basis of a RV of Rs.48,600 with effect from 1.4.1988 and Rs. 45,900 with effect from 1.4.1994. This was compounded by issuing a notice on 30.3.1999 under Section 126 of the Delhi Municipal Corporation Act ('DMC Act') seeking to enhance the RV from Rs. 45,900 to Rs. 1,33,100 with effect from 1.4.1998.

4. It is stated that without considering the objections filed by the petitioners on 4.5.1999 an ex parte assessment order was passed on 24.12.2001 fixing the RV at Rs.1,33,100. On an appeal by the petitioners the matter was remanded by the Additional District Judge (ADJ) for a fresh assessment. In the remanded proceedings an order was passed on 17.10.2002 by the Assistant Assessor & Collector by linking the RV value to the sale consideration reflected in the agreement to sell. Upon a representation by the petitioner to the Assistant Assessor & Collector an order was passed on 2.12.2002 by way of rectification fixing the RV consistent with that fixed for the other flats in the society. However, this rectification order was not produced before the learned ADJ.

5. On 25.5.2006 this Court directed the MCD to produce a tabulation indicating the relevant RV value of the flats in the same society as well as the increase in the said RV from time to time. The MCD was also asked to indicate if the Unit Area Method ('UAM') was followed by the MCD for the other similar flats in the society.

6. Thereafter on 5.10.2006 the Court passed the following order on

5.10.2006:

> "Having considered the chart produced pursuant to the directions of the Court, and upon comparing it with Annexure E-81 which is a part of the record, I am of the prima facie opinion that there is no impediment to treating the petitioner similarly and applying the unit area method in the case of the petitioner's flats. The respondents are accordingly directed to work out a tentative rateable value and also indicate the necessary rebates as applicable periodically. Let the tentative calculations be furnished to the petitioner within two weeks.
>
> List on 9th November, 2006. Order dasti to the parties."

7. Thereafter on 29.11.2006 the following order was passed:

> "The petitioner has submitted that the recalculated rateable value based on the unit area method produced by the DMC Act, 1957 is not correct to the extent that the factor upon which it has been premised is 0.9 whereas as per the provision of Section 1116A (2) (b), the relevant factor ought to be 0.9. The petitioner also relies upon the instructions contained in the self assessment form for the purpose, particularly serial No. 4 in clause 1-B which deals with the age factor. In this view, I am of he opinion that the respondent-MCD ought to revise the rateable value taking into consideration the age factor as 0.8. Let the revised order be issued to the petitioner within four weeks.
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> List for hearing on 8.3.2007."

8. Pursuant to the aforementioned two orders the MCD issued a rectification order on 24.2.2007 under Section 116(A) (2) of the DMC Act applying the age factor of 0.8. This therefore took care of the first issue concerning the RV and according to the petitioners no further directions are called for in that regard.

Submissions of parties on the other two issues

9. On the remaining two issues, viz., the validity of the demand of transfer duty and the claim by the petitioners for payment of compensation for the mental agony and harassment caused by the respondent MCD and its officials arguments were heard on 19.4.2007, 30.4.2007 and 2.5.2007. Arguments were addressed by Shri Raghu Nayyar appearing in person, Shri Ashok Bhasin learned senior counsel appearing for the MCD and Shri B.B.Jain learned counsel appearing for Respondent No.2 Assessor & Collector. These were supplemented by written submissions filed by the petitioners as well as the Respondent No.2, the Assessor & Collector.

10. According to the petitioners, at the stage of assessment of property tax Respondent No.4 Shri P.K.Rastogi (Assistant Assessor & Collector) by a noting dated 23.6.2003 proposed the recovery of transfer duty at the rate of 3% of the value shown in the agreement to sell. On this proposal Smt. Alka Sharma, the Deputy Assessor & Collector, Respondent No.3 directed issuing a bill raised in the name of the seller/original owner of flat A-45 including a transfer duty of Rs. 23,700. They say that the MCD has been unlawfully insisting on the payment of the transfer duty as a pre-co0ndition to the grant of mutation in favour of the petitioners in its records as regards the flats in question. This led to the petitioners filing the present petitions on 17.5.2004 seeking the relief as noticed hereinabove.

11. The petitioners submit that the MCD cannot insist on payment of transfer duty as a pre-condition for the grant of mutation in their favour. They submit that the amendment made to the Registration Act, 1908 by the Registration & Other Related Laws (Amendment) Act 2001 to require compulsory registration of a document of agreement

to sell in respect of an immovable property was itself only with prospective effect from 24.9.2001, i.e. after the date on which conversion from leasehold to freehold was granted by the DDA. The consequential amendment to Section 147 of the DMC Act by the DMC (Amendment) Act 2003 to include an instrument of "contract for transfer of immovable property" as being amenable to the levy of transfer duty was also made effective only from 1.8.2003. The only authority entitled to transfer duty in terms of Section 147 was the Collector of Stamps and the said transfer duty had in fact been adjudicated and collected by him at the time of registration of conveyance deed for grant of conversion from leasehold to freehold. The petitioners have placed on record the treasury challan issued to this effect. Accordingly, it is submitted that MCD lacks the authority in law to itself collect transfer duty in terms of Section 147 of the DMC Act as a pre-condition to grant of mutation in respect of the petitioners' respective flats.

12. Reliance is placed by the petitioners on the judgments of this Court in ***MCD v. Hotu Ram*** 97 (2002) DLT 135, ***Deepak Lamba v. DDA*** 108 (2003) DLT 440 and ***Collector of Stamps v. Dr. Hem Lata*** 64 (1996) DLT 450 (DB). The order dated 23.4.2003 passed by the Hon'ble Supreme Court dismissing the appeal filed by the MCD against the last mentioned judgment is also referred to. The petitioners have relied on the judgment of the Hon'ble Supreme Court in ***Calcutta Municipal Corporation v. Shrey Mercantile Pvt. Ltd.*** JT 2005 (3) SC 143 to contend that the mutation is for the benefit of the Corporation and that the MCD cannot insist the petitioners paying transfer duty as a pre-condition for grant of mutation.

13. In support of their claim for compensation, the petitioners rely

on the judgment of the Hon'ble Supreme Court in ***Common Cause v. Union of India*** AIR 1999 SC 2979 and ***Chairman, Railway Board v. Chandrima Das*** AIR 2000 SC 988 to contend that in cases involving constitutional tort committed by the officials of an agency of State, like the MCD, a mandamus can be issued to such agency or its officials found responsible, jointly and severally, to pay compensation to the victim. It is submitted that in the present cases, the petitioner Shri Raghu Nayyar, who has also been pursuing his wife's case, was required to visit the offices of the MCD for over a hundred times and this caused him tremendous mental agony and irreparable hardship. According to the petitioners the fact of such harassment is apparent from the records of the case and therefore it is a case of *res ipsa loquitor* not involving any disputed questions of fact.

14. Replying to these submissions Mr. Ashok Bhasin learned senior counsel appearing for the MCD first submits that although the document dated 22.8.1997 is termed as an agreement to sell its clauses showed that it was in fact a document of transfer of title. In the circumstances he placed heavy reliance on the judgment of the learned Single Judge of this Court in ***Veer Bala Gulati v. MCD*** 104 (2003) DLT 787 where in similar circumstances the plea of the petitioner that she should not be called upon to pay transfer duty to the MCD was negatived. He further submits that conversion to freehold which took place on 25.6.2001 would in any event render the document no different from a sale deed and therefore transfer duty was both leviable by the MCD and payable to it in terms of Section 128 of the DMC Act. Mr. Bhasin submits that thus even if the amendment to Section 147 was treated to be prospective the transfer duty would be payable in terms of Section 128 (4) of the DMC Act.

15. Mr. B.B. Jain learned Advocate first submitted that as far as for the Respondent No.2 was concerned, was not in fact responsible for the harassment caused, if any, to the petitioner. In any event the question as to which of the officers of the MCD caused harassment ot Shri Raghu Nayyar would be a disputed question of fact which cannot be examined in the present proceedings under Article 226. The matter would have to go to a civil court. On account of his special expertise in the subject, Mr.Jain offered, at the Court's request, to make submissions on the issue of the validity of the demand of transfer duty by the MCD.

16. Mr.Jain submitted that the decision in ***Dr. Hem Lata's*** case made it clear that transfer duty was payable to the Registrar/Collector of Stamps on the value shown on the deed of the agreement to sell. He points out that the DMC Act contemplates payment of property tax, in terms of Section 120 thereof, by the lessor, the superior lessor or the person in whom the right to let vests. Section 147 (as it stood prior to the amendment) contemplated payment of transfer duty only upon a transfer and not a mere agreement to sell. Section 147 DMC Act permitted the levy of transfer duty on an agreement to sell only from 1.8.2003 and therefore there was no question of the levy of transfer duty under the provisions of the said amendment as far as the instant cases are concerned. Mr. Jain further points out that in the instant case the conveyance deed converting the flat from a leasehold to freehold was executed by the superior lessor i.e. the DDA and the reversionary proportionate right in the land beneath the flats stood transferred to the petitioners. The Collector of Stamps adjudicated upon both the stamp duty and the transfer duty on the basis of the value shown in the conveyance deed which was deposited duly by the petitioner. Receipts for the same were also issued under Section 32(1)

of the Indian Stamp Act, 1899. Since with the transfer of land all structures standing thereon also get transferred, there was no question of MCD insist upon payment of transfer duty as a pre-condition to the grant of mutation.

17. Mr. Jain also pointed out that a letter had been written by the Chief Secretary, Government of National Capital Territory of Delhi ('GNCTD') to the Commissioner MCD on 6.9.2001 asking the MCD not to collect the 5% transfer duty upfront for grant of mutation. Even the Inspector General of Registration, Delhi had passed an order to the effect that Sub-Registrars should not accept the documents for registration on the production of receipts for payments of transfer duty made to the MCD. Thereafter on 14.12.2001 a circular was issued by the MCD to the Additional, Joint and Deputy Assessor & Collectors requiring them to collect transfer duty security which would be 5% of the sale consideration. This amount was to be refunded if it was shown that at the time of registration of the conveyance deed the transfer duty had already been collected by the Collector of Stamps. He submits that even this circular/instruction of the MCD is without the authority of law. He says that the decision in ***Veer Bala Gulati v. MCD*** (supra) did not notice these letters and the said judgment is therefore distinguishable in its application to the present cases. Mr. Jain points out that under the Duty on Transfer Bye-laws 1960 framed by the MCD under Section 481(z) of the DMC Act 1957 it is only the Registrar or the Sub-Registrar under the Indian Registration Act who were entitled to collect transfer duty. For all of the above reasons Mr. Jain submits that the demand of transfer duty by the MCD was not justified and could not be made as a pre condition for grant of mutation.

Validity of the demand by the MCD for transfer duty

18. This Court first proposes to take up the issue whether, in the instant cases, the MCD was entitled to levy and collect transfer duty on the basis of a percentage of the sale consideration of the property as reflected in the agreement to sell on the strength of its understanding of its powers under Section 147 of the DMC Act, which reads as under:

> "147. **Duty on transfer of property and method of assessment thereto**.--(1) Save as otherwise provided in this Act, the Corporation shall levy a duty on transfers of immovable property situated within the limits of Delhi in accordance with the provisions hereafter in this section contained.
>
> (2) The said duty shall be levied--
> (a) in the form of a surcharge on the duty imposed by the Indian Stamp Act, 1899 (2 of 1899) as in force for the time being in the Union territory of Delhi, on every instrument of the description specified below, and
> (b) at such rate as may be determined by the Corporation not exceeding five per cent., on the amount specified below against such instruments--

Description of instrument	Amount on which duty should be levied
(i) Sale of immovable property	The amount or value of the consideration for the sale, as set forth in the instrument.
(ii) Exchange of immovable property	The value of the property of the greater value, as set forth in the instrument.
(iii)Gift of immovable property	The value of the property, as set forth in the instrument.
(iv)Mortgage with possession of immovable property	The amount secured by the mortgage as set forth in the instrument.
(v) Lease in perpetuity of immovable property	The amount equal to one-sixth of the whole amount or value of the rent which would be paid or delivered in respect of the first fifty years of the lease as set forth in the instrument.
[(vi) Contract for transfer of immovable property	Ninety per cent of the value of the consideration for the transfer as set out in the contract.]

19. It requires to be immediately noticed that clause (vi) was introduced in the above provision only with effect from 1.8.2003. The other relevant provisions are Section 2(6), 2(11), Sections 31, 32 and 40 of the Stamp Act, 1899. It appears that transfer duty is not payable

under the Stamp Act and therefore the non-payment of such transfer duty cannot result in the impounding of the documents under the Stamp Act unless the document is in fact the sale deed. Previous to 1.8.2003, no transfer duty was payable on a document of a mere agreement to sell. In any event as pointed out in ***Sudarshan Talkies (Delhi) v. Collector of Stamps*** AIR 1978 Del 112 (Special Bench), the transfer duty leviable under Section 147 is independent of the stamp duty. In so observing the Full Bench of this Court approved the judgment of the Single Judge of this Court in ***Dayal Singh v. Collector of Stamps*** AIR 1972 Delhi 131. It was explained by the Full Bench of this Court in AIR 1978 Delhi 112 (at page 114):

> "6. It is evident from the perusal of Section 147 that the duty leviable, under the said section is in the form of surcharge leviable under the Corporation Act over and above the stamp duty. The transfer duty is thus assessed independently of the stamp duty. The proceeds so collected are credited to the fund of the Corporation. That being so, a conveyance deed cannot be impounded under Section 33 of the Stamp Act, nor can it be subjected to penalty under Section 40 of the said Act for failure to pay the duty envisaged by Section 147 of the Corporation Act. We are fortified in this view by the judgment of a Special Bench of this Court in Dayal Singh v. Collector of Stamps, ILR (1972) 1 Delhi 593: (AIR 1972 Delhi 131), wherein it was observed that the transfer duty leviable under Section 147 of the Corporation Act, on the transfer of property in the form of surcharge is leviable under the Corporation Act; that the transfer duty is levied and collected over and above the stamp duty, being payable to the Corporation and goes to the Corporation fund; and that the transfer duty is not a percentage of the stamp duty; on the other hand it is a percentage of the amount or value of the consideration for the sale as set forth in the instrument of conveyance. Further, the transfer duty is assessed independently of the stamp duty on the amount of consideration for sale. In the premises, it was held that a sale deed is not 'chargeable' to transfer duty under the Stamp Act and that the instrument of sale "cannot either be impounded

under Section 33 or can be subjected to the imposition of a penalty under Section 40 of the Stamp Act on the ground that the duty on transfer of property levied "under the Corporation Act" is either not paid or is insufficiently paid."

20. The question whether the stamp duty was payable on the value mentioned in the deed of conveyance was considered in ***Dr. Hem Lata v. The Collector of Stamps*** 63 (1996) DLT 198. A learned Single Judge held that although the agreement to sell had indicated the value of 5,51,000/- stamp duty was payable only on the value of Rs. 10,000/- mentioned in the deed of conveyance sent by the DDA for the purpose of conversion from leasehold to freehold. In doing so the learned Single Judge relied upon the judgment of the Hon'ble Supreme Court in ***Himalaya House Co. Ltd. v. The Chief Controlling Revenue Authority*** AIR 1972 SC 899. The Collector of Stamps then appealed to the Division Bench of this Court. The appeal came to be dismissed by the judgment in ***Collector of Stamps v. Dr. Hem Lata*** 64 (1996) DLT 450(DB). The Division Bench while upholding the judgment of the learned Single Judge reiterated that although the Registration Act and the Stamp Act were meant to augment the revenue of the Estate such objective would not "enable the determination of the stamp duty on consideration other than disclosed in the document itself." It was observed that the Collector of Stamps had to only go by the value mentioned in the deed of conveyance for the purpose of conversion from leasehold to freehold. It was thereafter observed as under:

> "It is clear from a perusal of the conveyance deed for the reversionary of interest in the land that it does not incorporate any term of the agreement to sell. In the absence of any terms of the agreement to sell being incorporated in the conveyance deed, the stamp duty that is chargeable and payable would be on the basis of the consideration as disclosed in the conveyance

deed, which is confined to the value of reversionary interest in the land underneath the flat."

21. The Collector of Stamps filed a further appeal to the Hon'ble Supreme Court. By a decision dated 23.4.2003 in C.A. No. 3078/1997 ***Collector of Stamps v. Dr. Hem Lata*** the Hon'ble Supreme Court dismissed the appeal upholding the views expressed by the learned Single Judge and Division Bench of this Court. An argument was made by the appellant in that case i.e the Collector of Stamps that what was conferred by the conveyance deed by the DDA (superior lessor) to the first Respondent i.e the purchaser of the flat was not only the reversionary right but also the right of the allottee in the property. The preambulatory recital in the conveyance deed was also referred to in support of such argument. However, the Hon'ble Supreme Court rejected this argument by observing as under:

> "The preambulatory recitals in the conveyance deed do not amount to the 'habendum et tenendum' of the conveyance deed. What is conveyed under the deed is indicated by the four clauses contained therein. A perusal thereof shows that the only thing conveyed by the deed is the reversionary rights of the DDA to the first respondent, and no more, the consideration for which is declared to be Rs. 10,000/-. We are, thus, of the view that the Collector of Stamps could not have adjudicated under Section 31(1) on the basis of anything other than the set forth consideration of Rs. 10,000/-."

22. As regards the argument that under Section 28(3) of the Indian Stamp Act, the ad valorem duty was payable on the basis of the value indicated in the agreement to sell, the Hon'ble Supreme Court observed as under:

> "The learned counsel pressed Section 28(3) of the Act into service and contended that the High Court had not properly appreciated the contention based on Section 28(3) of the Act. After hearing learned counsel, we are satisfied that the High

Court was justified in giving short shrift to the contention. What Sub-section (3) of Section 28 of the Act contemplates is that the interest in the property conveyed by a purchaser to a sub-purchaser, without obtaining the conveyance deed from the original seller must be identical with that which was agreed to be conveyed by the original seller to the purchaser. In the present case, the DDA was the original seller (assuming that it was really a case of sale) and the Society was the original purchaser.

The allottees were the members of the Society under an agreement which entitled them to get a sub-lease executed in their favour. They, in turn, without getting the lease/sub-lease executed in their favour, transferred their interest to the first respondent upon consideration of Rs.5,51,000/- under an agreement of sale. The conveyance deed which was sought to be adjudicated under Section 31(1) conveyed a totally different interest in the property, namely, the DDA's reversionary interest in the land to the sub-purchaser (first respondent). In our view, in these circumstances, sub-section (3) of Section 28 does not stand attracted and the High Court was justified in rejecting the contention."

23. In view of the above categorical pronouncements of the law by the Hon'ble Supreme Court it is clear that as far as the conveyance deed executed by the DDA in the present cases are concerned, the value indicated in the conveyance deed will be the value for the purpose of determining the stamp duty and any other duty including transfer duty payable in terms of the unamended Section 147 of the DMC Act. There is no manner of doubt that the transfer duty is in the nature of surcharge on the stamp duty and it is leviable in the same manner as stamp duty itself. When the petitioners presented the duly executed conveyance deeds before the Collector of Stamps, they were asked to pay Rs. 500/- towards the transfer duty, Rs. 300/- towards the stamp duty and a sum of Rs.4/-. These payments were made as

indicated by the challan dated 31.5.2001, copy of which has been placed on record. The conveyance deed was ultimately executed on 25.6.2001. These facts are not in dispute.

24. The change in the law took place thereafter. The Registration and Other Related Laws (Amendment) Bill, 2000 was laid in Parliament on 7.8.2001 with a view to making compulsory the registration of a document of an agreement to sell. In the Statement of Objects and Reasons (SOR) preceding the Bill it was pointed out that as far as the NCT of Delhi was concerned the Delhi Land (Restriction on Transfer) Act, 1972 had imposed restrictions on the transfer of land which had either been acquired by the Central Government or in respect of which acquisition proceedings had been initiated by the Government. Thus it became legally not permissible to enter into regular deeds of sale which could be got registered. It was then explained that this led to transfer of properties through deeds in the nature of agreement to sell which had the protection of Section 53 A of the Transfer of Property Act, 1882. Further it was pointed out as under:

> "4.2.2 As a consequence of freezing of land as a sequel to Delhi Development Act, 1957 and Delhi Land (Restrictions on Transfer) Act, 1972, parties execute the following deeds in the nature of part-performance to transfer property which are in vogue:
>
> (i) General Power of Attorney to perform all transactions in relation to the property;
>
> (ii) Special Power of Attorney to sell it further;
>
> (iii) a will in favour of the buyer or some of his family members;
>
> (iv) a receipt about payment of money;
>
> (v) an agreement to work as a contractor by the buyer for the seller; and
>
> (vi) an agreement to sale.

Out of the documents referred above, the document at Sl. No.(vi) carries the whole legal efficacy about the transaction which has the backing of Section 53 A of the Transfer of Property Act, 1882 and other instruments of transfer are supportive to the instrument of 'agreement to sale'.

4.2.3 These transactions have also become institutionalised to the extent that they got statutory recognition in our fiscal legislations as back as in 1984 under section 3 (47) of the Income Tax Act, 1961.

4.3.0 Though, transfer of property under part-performance of contracts is rampant in Delhi, even small towns of the country are not immune from such malady. States have incurred huge revenue loss due to ever increasing resort to contracts in the nature of part-performance as the contracts are economical substitute for regular sale deed where payment of stamp duty is avoided.

4.4.0 The Ministry of Urban Development and Poverty Alleviation took initiative in 1997 to bring legislative changes in relation to properties in National Capital Territory of Delhi. Since the problem had acquired an all-India dimension, it was thought desirable to enact an all-India legislation in this regard."

25. The above reasons were offered as a justification for introducing sub-section 1(a) in Section 17 of the Registration Act, 1908 which made the agreement to sell in such instance compulsorily registrable. Significantly, the SOR also clearly indicated that the aforementioned Amendment was to be only prospective. Clause 4.4.1 stated as under:

"4.4.1 It was also contemplated to give retrospective effect to the legislation from a cut-off date i.e. 1 June, 1972, but later on it has been decided to give the legislation a prospective-effect."

26. The resultant position therefore as regards the payment of

stamp duty and transfer duty on the deeds of conveyance dated 25.6.2001 is concerned in the instant case are concerned, it is the value mentioned in those deeds of conveyance presented for registration which had to be taken as the relevant value for the purpose of payment of such duty and not the value indicated in the agreement to sell. The value indicated in the agreement to sell would have been relevant if at all, only after 24.9.2001 when the Amendment was introduced in the Indian Registration Act, 1908 and not earlier. Therefore as far as the present case is concerned, the petitioners were rightly assessed to stamp duty and transfer duty by the Collector of Stamps on the basis of the value indicated in the conveyance deed i.e. Rs. 10,000/-. Once such conversion was granted there can be no manner of doubt that the superior lessor i.e. the DDA has transferred the reversionary right of the land beneath the flats in question to the petitioners.

27. Once the transfer duty was tightly as adjudicated upon and collected by the Collector of Stamps, there was no question of the MCD again demanding transfer duty in terms of the unamended Section 147 of the DMC Act, 1957 as it stood at that point in time. It requires to be noticed that under that provision the transfer duty is levied in the form of a surcharge on the stamp duty under Indian Stamp Act, 1899 and "other instruments of the description specified below" at such rate as may be determined by the Corporation not exceeding 5% on the amount specified below against such instrument."

The above provision therefore envisages

(i) that the transfer duty is a surcharge on the stamp duty;

(ii) that the transfer duty is leviable only on those instruments which answer the description set out in the table in s.147;

(iii) the transfer duty would be leviable at a rate not exceeding 5% on the amounts specified in s.147 against such instruments.

28. Prior to 1.8.2003, the date from which the said Section 147 was amended by Section 23 of the DMC Amendment Act 6 of 2003, there was no provision under which "a contract for transfer of immovable property" would attract transfer duty. In other words prior to 1.8.2003 if the document in question did not answer the description of a sale deed and it was merely an agreement to sell, it would not be amenable to levy a transfer duty. In interpreting the unamended Section 147 of the DMC Act the Hon'ble Supreme Court observed in ***MCD v. Pramod K.Gupta*** AIR 1991 SC 401 as under (AIR, pp.402-03:

> "The expression "instrument" in Section 147 of the Act has the same connotation as the word has under the Stamp Act, the reference to which has been expressly made. Cl.2 of S.2 of the Stamp Act gives an inclusive definition of the expression….The expression 'instrument of sale of immovable property" under Section 147 of the Act must, therefore, mean a document effecting transfer. The title to the property concerned has to be conveyed under the document. The document has to be a vehicle for the transfer of the right, title and interest. A document merely stating as a fact that the transfer has already taken place cannot be included within this expression. A paper which is recording a fact or attempting to furnish evidence of an already concluded transaction under which title has already passed cannot be treated to be such an instrument."

It was further held (AIR, p.403, para5):

> "It is manifest that the title passes under the auction-sale by force of law and the transfer becomes final when an order under Rule 92 confirming it is made. By the Certificate issued under Rule 94, the Court is formally declaring the effect of the same and is not extinguishing or creating title. The object of issuance

> of such a Certificate is to avoid any controversy with respect to the identity of the property sold, and of the purchaser thereof, as also the date when the sale becomes absolute….The Certificate, therefore, cannot be termed to be an instrument of sale so as to attract Section 147 of the DMC Act."

29. The argument of Mr. Bhasin on the basis and the decision of this Court in ***Veer Bala Gulati*** to the effect that agreement to sell should itself, in the circumstances, be construed as a sale deed for the purposes of levy of transfer duty under the unamended S.147 DMC Act , cannot be accepted for more than one reason. The said decision does not refer to the decision of the learned Single Judge and the Division Bench in ***Collector of Stamps v. Hem Lata*** which explains that mere recital of an instrument cannot by itself be determinative of the nature of the instrument. It has to be seen whether in fact the instrument has conveyed title to the property. Interestingly the judgment in ***Veer Bala Gulati*** was delivered on 7.4.2003 and soon thereafter the Hon'ble Supreme Court on 23.4.2003 gave its judgment in ***Collector of Stamps v. Hem Lata*** affirming the decision of the Division Bench of this Court. The extracted portion of the judgment of the Hon'ble Supreme Court indicates that:

> "The preambulatory recitals in the conveyance deed do not amount to the 'habendum et tenendum' of the conveyance deed. What is conveyed under the deed is indicated by the four clauses contained therein. A perusal thereof shows that the only thing conveyed by the deed is the reversionary rights of the DDA to the first respondent, and no more, the consideration for which is declared to be Rs. 10,000/-."

30. Secondly, the judgment does not at all refer to the parallel developments that had been taking place by way of Amendment to the

Registration Act, 1908. The SOR of the Amendment Bill which have been extracted hereinabove clearly shows that the legislature perceived the difficulty in construing the agreement to sell, which till then was not compulsorily registrable, as a sale deed merely on the basis of what was stated in the recitals of such a document. Further, the legislature was also clear that prior to 24.9.2001 such documents were not to be treated as compulsorily registrable. The intention of the legislature has been made specific by the subsequent amendment to Section 147 of the DMC Act, 1957 which was only given prospective effect from 1.8.2003. The Court is required to interpret Section 147 as it stood prior to the said amendment to Section 147 DMC Act and when so interpreted in the light of the changes earlier made to the Registration Act, 1908, it cannot be held that Section 147 as it stood prior to 1.8.2003 permitted the MCD to levy transfer duty on the consideration indicated in an agreement to sell, much less make such payment a pre-condition for the grant of mutation.

31. Thirdly, this Court is bound to follow the dictum of the Hon'ble Supreme Court in ***MCD v. Pramod K. Gupta*** where it was clearly held that an instrument of sale of immovable property in the case of a court auction sale cannot attract transfer duty under Section 147 of the DMC Act till an order confirming such sale is made. The said judgment was sought to be distinguished in ***Veer Bala Gulati*** on the basis that it concerned a court auction sale and not an agreement to sell. If the Hon'ble Supreme Court was not prepared even to accept an instrument of sale pursuant to court auction as a sale deed for the purpose of the unamended Section 147, then much less can an agreement to sell be considered to answer that description for the purpose of the said unamended section.

32. Fourthly, as rightly pointed out by Mr. Jain, the attention of the Court in ***Veer Bala Gulati*** was also not drawn to the correspondence between the Chief Secretary of the GNCTD and the Commissioner of MCD where it was clearly indicated that the collection of transfer duty by the MCD at 5% for the purpose of mutation of properties was not permissible in law since stamp duty and even surcharge on stamp duty could be only collected by the Collector of Stamps. The letter dated 6.9.2001 of the Chief Secretary reads as under:

> "It has been reported by the Anti-Corruption Branch that House Tax Deptt. Of Municipal Corporation of Delhi is allowing mutation of properties by accepting transfer duty @ 5%. This is not permissible under the law as stamp duty can be collected by the Collector of Stamps and no other authority can be allowed to accept cash in lieu thereof as is being done by your House Tax Deptt. If you recall, I had personally also discussed this matter with you.
>
> You are, therefore, requested to issue appropriate directions to all the concerned officers to discontinue the aforesaid practice as it discourages the transferors/transferees of the properties from getting their documents registered which deprives the Govt. of Delhi of its legitimate dues @ 3%, which has since been revised to 8%.
>
> The Divisional Commissioner is also being advised to direct all the Sub Registrars not to accept/ entertain such receipts issued by the Municipal Corporation of Delhi in support of their claims for having deposited transfer duty @ 5%."

The instructions issued by the Inspector General Registration to the effect that the conveyance deed should not be registered unless the transfer duty along with the stamp duty is directly paid to the Collector of Stamps was also not noticed. Further, there can be no manner of doubt on a reading of Clause 3 of the ***Duty on Transfer of Property Bye Laws***, 1960 and transfer duty was to be paid only to

the Registrar or Sub-Registrar under the Indian Registration Act, 1908.

33. For all of the above reasons this Court is unable to accept the contention of the MCD that prior to 1.8.2003 it could validly impose and collect transfer duty on the value of the sale consideration indicated in the agreement to sell.

34. It has been brought to notice of this Court that a departmental instruction has been issued on 14.12.2001 directing the Assessing Officer to collect "transfer duty security" at the rate of 5% of the sale/transfer consideration on unregistered sale purchase instruments which would be refundable to the tax payer "when he gets the sale purchase instrument registered with the Sub Registrar and file a copy of the registered sale deed for the same consideration amount and showing payment of 5% transfer duty being MCD's share in the stamp duty." In view of the above settled position, it appears that even this instruction is entirely without the authority of the law. The scheme of the DMC Act appears to be that it is the Collector of Stamps who has to collect the transfer duty along with stamp duty and then credit the extent of transfer duty to the account of the MCD. There exists no basis in law for the MCD to demand "transfer duty security" as has been directed by the instructions dated 14.12.2001 for the purpose of effecting mutation in the municipal records.

35. The net result of the above discussion is that as far as the instant cases are concerned the MCD was not justified in seeking to collect transfer duty from the petitioners as evidenced by its demand dated 11.3.2004. Accordingly the said demand is quashed. Since this was made a pre-condition for grant of mutation of each of the

petitioner's flats in their respective names, a direction is issued to the MCD in each of the two writ petitions to carry out mutation of the flats in respect of the petitioner's name within a period of four weeks from today and in any event not later than 6.8.2007.

Claim for compensation

36. As regards the prayer of the petitioners that they should be compensated for the harassment and mental agony that has been caused on account of the illegal actions of the officers of the MCD, this Court finds some justification in the submissions made on behalf of Respondent No.2. The pleadings in this regard indicate that these are disputed questions of fact which are required to be decided on the basis of evidence in a civil suit. The precise role played by each of the respondents and whether they were acting unreasonably and arbitrarily in the performance of their statutory duties will require to be determined in those proceedings before the question of fastening the liability for payment of compensation is taken up for consideration. Those questions obviously cannot be decided in proceedings under Article 226 of the Constitution. Accordingly, this Court is not inclined to grant the relief of compensation as claimed by the petitioners. However, this Court leaves it open to the petitioners to approach the civil court for their claim for damages, if any, payable by all or any of the Respondents. The petitioners would be able to invoke Section 14 of Limitation Act to explain the delay in approaching the civil court.

Costs

37. However, this Court cannot at the same time be unmindful of the fact that the petitioners have had to approach this Court for redress on both the questions of rateable value as well as transfer

duty after unsuccessfully availing of the other remedies available to them in law. This has undoubtedly taken much of the petitioners' time and energy which could have easily been avoided if the authority had performed their statutory duties by correctly applying the law. Therefore, this Court is inclined to award the petitioners the costs of the present litigation. Accordingly while allowing these writ petitions with above directions, this Court directs that the MCD will pay to each of the petitioners, within a period of four weeks from today and in any event not later than 6.8.2007 costs in the sum of Rs. 25,000/-.

38. To summarise the findings and directions:

(i) The stamp duty and transfer duty were rightly assessed and collected by the Collector of Stamps from the petitioners on the basis of the value of Rs. 10,000/- indicated in the conveyance deeds dated 25.6.2001.

(ii) Once the transfer duty stood rightly assessed by and paid to the Collector of Stamps, the MCD was not justified, in terms of the unamended Section 147 DMC Act, in seeking to collect transfer duty from the petitioners as evidenced by its demand dated 11.3.2004. Accordingly the said demand is quashed.

(iii) Since the payment of such transfer duty was made a pre-condition by the MCD for grant of mutation in favour of the petitioners, a direction is issued to the MCD in each of the two writ petitions to carry out mutation of the flats in the petitioner's respective names within a period of four weeks from today and in any event not later than 6.8.2007.

(iv) This Court is not inclined to grant the relief of compensation as claimed by the petitioners. However, this Court leaves it open to the petitioners to approach the civil court for their

claim for damages, if any, payable by all or any of the Respondents.

(v) This Court directs that the MCD will pay to each of the petitioners, within a period of four weeks from today, and in any event not later than 6.8.2007 costs in the sum of Rs. 25,000.

39. With the above directions the writ petitions are allowed in part and the pending applications are disposed of.

S. MURALIDHAR,

J

JULY 6, 2007
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